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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,482	04/04/2001	John C. Carson	A17-045	6243

7590 09/11/2006

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714 COLORADO AVENUE  
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EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/826,482

Applicant(s)

CARSON ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-30,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-30,32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/19/06 has been entered.

Claims 1-3, 5-30 and 32-33 are pending in the application and the status of the application is as follows:

### ***Claim Rejections - 35 USC § 103***

Claims 1-3, 5-30 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of GB 2,206,048 ('048) and PGPUB 2002/0160023 and U. S. Patent 6,043,204 ('204).

*The instant application is a claiming compositions comprising “*

- 1. High density aromatic ester*
- 2. Surfactant*
- 3. Oil*
- 4. Exfoliating agent*

GB '048 teaches multi-layer cosmetic compositions. See the abstract, which teaches the formation of two or more layers. It teaches oil phase and emulsifying agent. Emulsifier corresponds to the surfactant claimed and oil phase corresponds to the claimed low density oily material having emollient or conditioning properties. See also page 1, lines 1-10 See page 2, lines

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1-21 where patent teaches that various ingredients can be incorporated into the oil phase which include sunscreens and various oils. See pages 2-4 for the emulsifier. Patent also teaches at page 4, lines 18 et seq that the compositions are used for cleansing products. See also page 5 for the advantages of using the multi phase composition over the single-phase composition. See examples wherein patent teaches the separation of layers which can be two or three within a time period. Patent does not teach high density aromatic ester (sunscreen agents) or exfoliating agents or the specific surfactants. However PG pub document teaches multiphase cosmetic compositions. See paragraph 6 for glycols (claim 19). See paragraph 7 for the oils. See various esters, which are also claimed in claim 26 under esters. See paragraph 12 for additional moisturizers that can be incorporated into the compositions. See paragraph 13 for cleansing products. See paragraph 14 for various shell powders, which are exfoliating agents due to the coarse nature. PGPUB document suggests surfactants at paragraph 15 and sunscreens at paragraph 16. See also examples. PG pub document does not teach the specific surfactants or specific sunscreens. Patent '204 teaches (col.4, line 64) for the claimed octyl methoxy cinnamate which is the claimed high density aromatic ester of claim 25, see also col.5, lines 44-45 for octyl salicylate which is also the claimed high density aromatic ester of claim 24, see col.6, lines 5-45 for the claimed surfactants and also anionic surfactants of claims 11-14, see col.8, line 35 for lactic acids, glycolic acids which are used in the cosmetic art as exfoliating agents and it reads on the claimed exfoliating agents, see also the same column, lines 32-33 for the claimed penetration enhancers which are "propylene glycol, butylene glycol and glycerin". See col.7, lines 45-67 for the claimed low-density oil. See the title, examples and claims for body cleansing, which read on the claimed "body cleanser".

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Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare multilayer cosmetic compositions taught by GB '048 using the oil and emulsifier and also add sunscreen and exfoliating agents expecting beneficial effect to the consumer. One of ordinary skill in the art would be motivated to add high density aromatic ester and exfoliating agents of PG PUB and '204 and add specific sunscreens and surfactants with the reasonable expectation of success that the cleanser which has all these ingredients has the additional advantage of providing protection against sun by the use of sunscreens and exfoliating agents provide the consumer removing dirt and/or dead cells. It is also marketing gimmick to have all the specific components in different layers so the consumer can see visually separation of layer i.e., aesthetically pleasing which is appealing to the consumer than a product which does not separate into layers. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**JYOTHSNA A VENKAT Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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